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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/691,777

10/22/2003

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01/06/2009

EXAMINER

BORISSOV, IGOR N

ART UNIT

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3628

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/691,777	Applicant(s) LEE, HOWARD M.	
	Examiner Igor N. Borissov	Art Unit 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-76 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-76 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/17/2008 has been entered.

Response to Amendment

Amendment received on 12/17/2008 is acknowledged and entered. Claims 1-4, 17, 24, 28, 41, 48, 53, 55, 59-63, 68 have been amended. New claim 77 has been added. Claims 1-77 are currently pending in the application.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 18-24, 42-48, 54-63 and 73-77 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

Claims 18-24, 42-48, 54-63 and 73-77 are rejected under 35 USC 112, first paragraph based on current case law (and accordingly, the MPEP), which require such a rejection if a 101 rejection is given because when Applicant has not in fact disclosed the practical application for the invention, as a matter of law, there is no way Applicant could have disclosed *how* to practice the *undisclosed* practical application. MPEP states:

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("The how to use prong of section 112 **incorporates as a matter of law** the requirement of 35 U.S.C. 101 that the specification disclose as a matter of fact a practical utility for the invention If the application fails as a matter of fact to satisfy 35 U.S.C. § 101, then the application **also fails as a matter of law** to enable one of ordinary skill in the art to use the invention under 35 U.S.C. § 112."); In re Kirk, 376 F.2d 936, 942, 153 USPQ 48, 53 (CCPA 1967) ("Necessarily, compliance with § 112 requires a description of how to use presently useful inventions, **otherwise an applicant would anomalously be required to teach how to use a useless** invention."). See, MPEP 107.01(IV), quoting In re Kirk (emphasis added).

Therefore, claims 18-24, 42-48, 54-63 and 73-77 are rejected on this basis.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24, 49-53, 60-63 and 72 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 24 recites the limitation "The apparatus of claim 18" in a preamble. There is insufficient antecedent basis for this limitation in the claim.

Claim 49 is directed to an apparatus and recites the following limitation: "a storable representation of a service call arising between an agent of a business and a caller in a first geographic area", which is confusing. It is not clear to what extend the "storable representation" represents a structural element. Same reasoning applied to claims 50-53.

Claim 52 recites: "wherein predefined criteria includes *scoring* the agent according to criteria developed by sampling agent performance at least once a day on a

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substantially continuing basis”, which is confusing. It is not clear to what extend the *method step* of “scoring” represents the “predefined criteria”.

Claim 60 is directed to an apparatus while reciting only “report data”, which is confusing. It is not clear to what extend the “data” represents a structural element. Same reasoning applied to claims 62-63.

Claim 62 recites: “The apparatus of claim 60, wherein the calibration reduces deviations between individual analyst’s to a value selected from the group consisting of *approximately* three percent (3%), *approximately* five percent (5%), a value specified by the business”. The term “approximately” makes the claim indefinite.

Claim 76 recites: “The method of claim 75, wherein the higher frequency is *approximately* six times per day”. The term “approximately” makes the claim indefinite.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 18-24, 42-48, 51-63 and 73-77 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Independent method claims 18, 42 and 54 are directed to a series of steps. In order for a series of steps to be considered a proper process under § 101, a claimed process should either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). Thus, to qualify as patent

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eligible, these processes should positively recite the other statutory class to which it is tied (e.g., by identifying the apparatus which accomplishes the method steps), or positively recite the subject matter that is being transformed (e.g., by identifying the product or material that is changed to a different state). Claims 18, 42 and 54 identify neither the apparatus performing the recited steps nor any transformation of underlying materials, and accordingly are directed to non-statutory subject matter. Dependent claims 15-24, 43-48, 55-59 and 73-75 do not cure the § 101 deficiency of the corresponding independent claims, and, therefore, are rejected as being directed to non-statutory subject matter.

Dependent claims 51-53 are rejected under 35 U.S.C. 101 because they appear to be a mixing of two distinct statutory classes of invention. The recitation of "wherein analyzing for quality of service includes scoring the agent according to predefined criteria" is a positive recitation to a method step. Claims 51-53 depend from apparatus claims. Apparatus claims that contain recitations that positively recite the use of recited structure in a method step are not considered statutory because the claim is bridging two distinct statutory classes on invention.

Independent system (apparatus) claim 60 recites "report data". However, an invention, which is eligible or patenting under 35 U.S.C. 101, is in the "useful arts" when it is a machine, manufacture, process or composition of matter, which produces a concrete, tangible, and useful result. The claim, as currently recited, appears to be directed to the "report data", which is nothing more than information or code per se. Without reciting a computer-readable medium having said instructions embodied therein, said claim is considered to be directed to a non-statutory class of invention. Dependent claims 61-63 do not cure the § 101 deficiency of claim 60, and, therefore, are rejected as being directed to non-statutory subject matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 49-53 and 60 are rejected under 35 U.S.C. 102(e) as being anticipated by Eilbacher et al. (US 6,959,078).

Claim 49. Eilbacher et al. teaches an apparatus, comprising:

a storable representation of a service call arising between an agent of a business and a caller in a first geographic area (C. 5, L. 10-17);

a communication link to transfer the storable representation to a second geographic area (a quality management system 30 is located remotely from the customers and agents) (C. 5, L. 10-17; C. 8, L. 7-37);

a storage device coupled with the communication link, to store the storable representation (C. 5, L. 10-17).

Information as to: "wherein the storable representation *is capable* of being analyzed for quality of service in the second geographic area by an analyst, *the second geographic area is subject to a geographic wage attenuator* and *the analyst has been trained* to provide a calibrated determination of quality of service rendered by the agent *during the service call* " do not recite a structural element, but recite an intended use of the system, and, therefore, is not given patentable weight. MPEP 2106 (II) (C) states: "Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation."

Claims 50-53. Claims 50-53 depend from claim 49 and do not recite structural elements but recite an intended use of the system. Therefore, the limitations, recited in the claims, are not given patentable weight (same reasoning as applied to claim 49).

Claim 60. Eilbacker et al. teaches a data base comprising:
report data corresponding to analyzed service calls between an agent and customers (for the purposes of the examination the examiner understands the "report data" as a storage device adapted to store said data) (C. 5, L. 10-17; C. 8, L. 7-37).

Information as to: "wherein the *agent's performance is analyzed at least once a day* and *analysis of the services calls proceeds on a substantially continuing basis*" do not recite a structural element, but recite an intended use of the system, and, therefore, is not given patentable weight. MPEP 2106 (II) (C) states: "Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-48, 54-59, 61-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eilbacher et al. (US 6,959,078) in view of Garrido (Southeast Asia; Call it a boom: Philippine call centers; Internet printout; 4 pages; 04/22/2003) and further in view of Jotkowitz (2003/0187725 A1).

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Claims 1, 18, 25, 42, 49, 64 and 69. Eilbacker et al. teaches a method, system and computer-readable medium having instruction embedded therein for causing a computer to implement said method for analyzing a call agent performance, said system comprising a storage device, a computer configured for receiving and storing data, and generating reports, a client agent computer/console, said method comprising:

receiving a storable representation of an interaction between an agent of a business and customers wherein the business is located in a first geographic area (C. 5, L. 10-17);

providing the storable representation to an analyst, in the second geographic area, to determine quality of service provided to a customer by the agent (a quality management system 30 is located remotely from the customers and agents) (C. 5, L. 10-17; C. 8, L. 7-37);

generating report data associated with the calibrated determination of quality of service (C. 5, L. 15).

While Eilbacker et al. teaches that said quality management system 30 can be located anywhere in the world, Eilbacker et al. does not teach that said second geographic area is subject to a wage attenuator; and that wage attenuation is utilized to reduce a cost of analyzing the service call in the second geographic area relative to the cost of analyzing the call in the first geographic area. Also, Eilbacker et al. does not teach that the analyst has been trained to provide a calibrated determination of quality of service.

Garrido discloses a practice of outsourcing various jobs in the countries, having lower wages. Specifically, India and Philippine were discussed as the countries where local citizens are paid much less than workers doing same job in the USA (See first and third pages).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Eilbacker et al. to include that said second geographic area is subject to a wage attenuator, as disclosed in Garrido, because it would advantageously allow to save funds and decrease the turnover rate for call centers, as specifically stated in Garrido.

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Jotkowitz teaches a method and system for monitoring professional development, wherein the performance of workers (call agents) is monitored and a report including calibrated (averaged) results is provided (Figs. 3-7), wherein calibrating the results indicates necessary skill and training in doing so.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Eilbacker et al. and Garrido to include that said data in said report represents a calibrated determination of quality of service rendered by the agent to the customers, as disclosed in Jotkowitz, because it would advantageously allow to provide managers as well as agents a constant input as to performance, as specifically stated in Jotkowitz [0004].

Claims 54. Eilbacker et al. teaches a method, comprising:

receiving a storable representation of a service call between an agent of a business and customers wherein the business is located in a first geographic area (C. 5, L. 10-17);

analyzing the storable representation, in a second geographic area (a quality management system 30 is located remotely from the customers and agents) to determine the service quality provided to a customer by the agent (C. 5, L. 10-17; C. 8, L. 7-37);

generating report data associated with the analyzing (C. 5, L. 15).

While Eilbacker et al. teaches that said quality management system 30 can be located anywhere in the world, Eilbacker et al. does not teach that said second geographic area is subject to a wage attenuator; and that wage attenuation is utilized to reduce a cost of analyzing the service call in the second geographic area relative to the cost of analyzing the call in the first geographic area. Also, Eilbacker et al. does not teach that said data in said report represents a calibrated determination of quality of service rendered by the agent to the customers.

Garrido discloses a practice of outsourcing various jobs in the countries, having lower wages. Specifically, India and Philippine were discussed as the countries were

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local citizens are paid much less than workers doing same job in the USA (See first and third pages).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Eilbacker et al. to include that said second geographic area is subject to a wage attenuator; and that wage attenuation is utilized to reduce a cost of analyzing the service call in the second geographic area relative to the cost of analyzing the call in the first geographic area, as disclosed in Garrido, because it would advantageously allow to save funds and decrease the turnover rate for call centers, as specifically stated in Garrido.

Jotkowitz teaches a method and system for monitoring professional development, wherein the performance of workers (call agents) is monitored and a report including calibrated (ranked) results is provided (Figs. 3-7), wherein calibrating the results indicates necessary skill and training in doing so.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Eilbacker et al. and Garrido to include that said data in said report represents a calibrated determination of quality of service rendered by the agent to the customers, as disclosed in Jotkowitz, because it would advantageously allow to provide managers as well as agents a constant input as to performance, as specifically stated in Jotkowitz [0004].

Furthermore, Eilbacker et al. discloses notifying the agent of the results of the analysis, including displaying warning and congratulatory messages (C. 4, L. 37-44).

Furthermore, Eilbacker et al. teaches:

Claims 2, 19, 26. Transmitting the storable representation to the second geographic area (C. 5, L. 10-17).

Claims 4, 20, 28, 43, 55, 63, 65, 75, 76. Said apparatus, wherein an analysis frequency applied to the agent's interactions is selected from the group consisting of at

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least once per day, more than once per day, and a statistically relevant sample size based on the requirements of the business (Eilbacker et al. teaches that if the data analyzer 400 detects that the number of calls being processed by the contact center 40 has increased significantly, the data analyzer could correspondingly increase the frequency by which the environmental data 450 is recorded each hour. C. 10, L. 58-62).

Claims 5-7, 21-23, 29-31, 44-47, 50, 56-58, 66, 67, 70, 71. Eilbacker et al. discloses that at least one of the agent's interactions per day is analyzed for quality of service (C. 5, L. 15; C. 10, L. 58-62).

Claim 8 and 32. Said apparatus, wherein the report data further comprises: a training tip for the agent based on analyzing the agent's interactions (C. 3, L. 29-32; C. 11, L. 43-44).

Claims 9, 10, 33 and 34. Said apparatus, further comprising: a data base comprising a plurality of report data collected from the agent (C. 5, L. 10-17);

Claim 11. Said apparatus, wherein an interaction comprises a telephone call (C. 5, L. 45-48).

Claim 12. Said apparatus, wherein an interaction comprises an email message (C. 6, L. 29, 47-50).

Claims 13-15 and 37-39. Garrido discloses said apparatus, wherein the first geographic area is the United States of America and the second geographic area is external to the United States of America. (See first and third pages). Furthermore, Claims 13-15 and 37-39 do not recite structural elements but recite an intended use of the system. Therefore, the limitations, recited in the claims, are not given patentable weight. MPEP 2106 (II) (C) states: "Language that suggests or makes optional but

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does not require steps to be performed or *does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.*”

Claims 16 and 40. Same reasoning as applied to claims 13-15 and 37-39.

Claims 17, 24, 41, 48, 53, 59, 61, 68, 77. Jotkowitz teaches said apparatus, wherein calibration selected from the group consisting of an internal calibration, a client calibration, an anonymous transaction simulation (Figs. 3-7). The motivation to combine the references would be providing managers as well as agents with a constant input as to performance, as specifically stated in Jotkowitz [0004]. Information as to “and a quality audit has been applied to me analyst to facilitate the calibrated determination of quality of service” represents an intended use of the system, and, therefore, not given patentable weight (Same reasoning as applied to claim 13).

Claims 51, 52. Same reasoning as applied to claim 49.

Claim 62. Same reasoning as applied to claim 60. Information as to “wherein the calibration reduces deviations between individual analyst’s to a value selected from the group consisting of *approximately* three percent (3%), *approximately* five percent (5%), a value specified by the business” does not recite structural elements but recite an intended use of the system. Therefore, the limitations, recited in the claims, are not given patentable weight. MPEP 2106 (II) (C) states: “Language that suggests or makes optional but does not require steps to be performed or *does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation.*”

Claims 73 and 74. Same reasoning as applied to claim 18.

Claims 3 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eilbacher et al. in view of Garrido, further in view of Jotkowitz and further in view of McIlwaine et al. (US 6,459,787 B2).

Claims 3 and 27. The combination of Eilbacher et al., Garrido, and Jotkowitz teaches all the limitations of claims 3 and 27, except that the communication link further comprises a satellite. McIlwaine et al. teaches a telecommunications system, wherein data is transmitted over a satellite link (C. 5, L. 54). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination to include that the communication link further comprises a satellite, as disclosed in McIlwaine et al., because it would advantageously allow to transmit data over a wide geographic area, as specifically stated in McIlwaine et al.

Response to Arguments

Applicant's arguments filed 12/17/2008 have been fully considered but they are not persuasive.

In response to applicant's argument that Jotkowitz is silent on the subject of calibrating, it is noted that Jotkowitz explicitly teaches said feature. Specifically, Jotkowitz teaches that the performance of workers (call agents) is monitored and a report including calibrated (averaged) results is provided (Figs. 3-7).

In response to applicant's argument that Eilbacher et al. does not teach that said second geographic area is subject to a wage attenuator; and that wage attenuation is utilized to reduce a cost of analyzing the service call in the second geographic area relative to the cost of analyzing the call in the first geographic area, it is noted that Garrido was applied for this feature. Specifically, Garrido discloses a practice of outsourcing various jobs in the countries, having lower wages. Garrido further teaches

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that in India and Philippine local citizens are paid much less than workers doing same job in the USA (See first and third pages), thereby indicating lower wages.

The remaining applicant's arguments essentially repeat the arguments presented above; therefore, the responses presented by the examiner above are equally applicable to the remaining applicant's arguments.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Igor Borissov whose telephone number is 571-272-6801. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Igor N. Borissov/

Primary Examiner, Art Unit 3628

01/02/2009